

## Monuments in Public Parks Constitute Government Speech

Recently the U.S. Supreme Court ruled on a question regarding the First Amendment in *Pleasant Grove City, et al. v. Summum*, 555 U.S. \_\_\_\_ (2009). In Pleasant Grove, Utah a Ten Commandments monument currently exists in a public park. Summum, a small religious sect, proposed a “Seven Aphorisms” monument for the park, which Pleasant Grove officials denied.

Summum sued the city in federal court and asked to be allowed to construct the aphorisms monument in the park. The District Court rejected Summum’s claim, but that decision was reversed on appeal to the 10<sup>th</sup> Circuit Court of Appeals. The 10<sup>th</sup> Circuit held that the city was violating Summum’s right to free speech under the First Amendment without a compelling reason to do so. On appeal to the Supreme Court, the issue was whether the monuments’ display in a public park amounted to government speech or private speech.

In a unanimous opinion, the Supreme Court ultimately decided that permanent monuments donated by private organizations to be displayed on public property are government speech, just as monuments that are commissioned or financed by the government are government speech. The Court noted that a government entity may exercise the same freedom to express its views as its citizens do. However, this freedom is not without limits. In particular, the Court pointed out that the government speech must comport with the Establishment Clause (the portion of the First Amendment that prohibits government from promoting or establishing one religion over another).

The opinion didn’t analyze whether Pleasant Grove’s *existing* Ten Commandments monument violated the Establishment Clause. It is possible that the City could face another lawsuit, alleging that the existing monument is unconstitutional under the Establishment Clause. However, concurring opinions in the *Pleasant Grove* case, citing the Supreme Court’s recent decision to permit a virtually identical Ten Commandments monument to remain on the Texas Capitol’s grounds, indicate that allowing the existing monument in the city’s park would be constitutional.

This decision should *not* be read to give Oregon cities license to accept and reject at will similarly offered monuments, memorials, etc. The decision does not consider the Oregon Constitution’s guarantees of speech and expression. It is not clear from Oregon Supreme Court precedent that an Oregon municipality would have as much discretion under the Oregon Constitution as it would under the U.S. Constitution. Should a city find itself presented with a similar proposal, it is highly recommended that it consult with legal counsel for additional analysis under the Oregon Constitution and other concurring opinions in the *Pleasant Grove* case.